IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6134 OF 1997

Adgonda Babgonda Patil & others Petitioners

versus

The Executive Engineer, Kolhapur
Irrigation Department, Kolhapur
and another Respondents

Ms.Deepa Ahuja for Mr.V.B.Naik, adv. for petitioners.

Smt.S.S.Bhendey, AGP for respondents.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 7th December 2004

ORAL JUDGEMENT (PER : S.C.DHARMADHIKARI, J.) :-

1. This is a petition under Article 226 of Constitution of India. The petitioners challenge legality and validity of notices (Annexure-A collectively) dated 21st December 1996. By these notices the respondents are recovering water cess from the petitioners.

2. According to the petitioners, levy is ex-facie without jurisdiction and void. In their submission, unless preconditions for recovering the water cess under the Maharashtra Irrigation Act, 1976 are complied with, the respondents could not have issued demand notices in question.

3. Very few facts are required to be set out to appreciate the aforesaid submissions. Petitioners have installed their own motors at their respective lands. The lands are situated at Village Danwad, Tal. Shirol, District Kolhapur. The motors have been installed pursuant to permission granted by authorities. The petitioners are drawing water from the waste bottom of Dudhganga River. It is their case that they are paying taxes regularly i.e. Education Tax etc.. It is contended that the taxes under Maharashtra Land Revenue Code, 1966 (for short hereinafter referred to as "Code") have also been paid for drawing the water.

4. It is contended that topographical location of village Danwad along with villages Dattawad and Ghosarwad is unique in the sense that these villages are on the border of State of Maharashtra and Karnataka. It is pertinent to

note that Dudh Ganga Project for which lands have been acquired from petitioners' villages are purported to be in the benefited zone. It is contended that Dudh Ganga River flows partly from Karnataka and partly from Maharashtra. It is contended that last barrage by Government of Maharashtra is located at Sulkud village in Kagal Taluka, District Kolhapur. Village Danwad is about 40-50 kms. down stream of the village of Sulkud. After Sulkud barrage Dudh Ganga River flows into Karnataka State totally.

5. It is contended that about 4-5 dams are constructed on the river after Sulkud and all belong to Karnataka Government. Therefore, petitioners are at the mercy of that Government for release of water from dams under it's control. The petitioners submit that they get waste water of Dudh Ganga River and also from back waters of Kallol barrage, which is located after the confluence of the Krishna River and the Dudh Ganga River. Thus, the water that is made available and supplied to the petitioners is not from the State of Maharashtra. There is no guaranteed supply of water. It is contended that essential ingredient of levy of water cess is that there must be a guarantee of supply of water

by the Government. It is therefore contended that respondent no.1 has no competence or authority to recover water cess from the petitioners. That apart, Dudh Ganga River flowng partly from Karnataka and partly from Maharashtra, is not a notified river u/s 11 of the Irrigation Act. Therefore, there is no question of issuing notices for payment of water cess as contemplated by Irrigation Act. Therefore, it is submitted that the impugned notices are bad in law and deserve to be quashed and set aside.

6. The petitioners have pointed out that the amounts under the impugned notices have been paid under protest. Petitioners submit that if the State Government gives a positive assurance and guarantees water supply to the petitioners, they are willing to pay the water cess.

7. Ms.Ahuja, learned counsel appearing for the petitioners has very ably placed for our consideration the aforesaid submissions. Additionally, she has invited our attention to the provisions of Irrigation Act and more particularly Sections 11 to 14. She has also taken us through definitions of term "Canal" and

"Canal Revenue" appearing in Section 3 of Irrigation Act. She has also invited our attention to a map which is placed on record, and contended that beyond Sulkud there is no notification under Irrigation Act. Therefore, the demand notices deserve to be quashed and set aside.

8. On the other hand, Ms.Bhende, learned AGP submits that there is no substance in any of these contentions. She submits that the petitioners have been drawing water from the supply which is earmarked for the villages including their village. On the basis of the water supply drawn from time to time, the villagers have been making payment and there is no substance in the grievance that it is made under protest. Further, she points out that it is true that no notification is issued as yet beyond Sulkud village but the process is going on and a decision in that behalf will be taken by the respondents shortly. She submits that in the affidavit filed in reply in Writ Petition No.219 of 1998 it is pointed out by the respondents that till the year 1976 water permission was issued and water charges were recovered by the revenue authorities. After Irrigation Act came in force,

the Executive Engineer has been authorised and empowered to issue water permission and recover water charges from the irrigators of the benefited zone of the project. She points out that in pursuance of a public notice issued in the month of May 1993, the irrigators from village Dattawad approached the Executive Engineer and expressed their willingness to take water for irrigation. Since the year 1993, the Irrigation Department is regularly supplying water to the irrigators including the petitioners from the benefited zone of Dudh Ganga Project through out the year. She submits that majority of the irrigators from the benefited zone of Dudh Ganga Project have been paying water charges regularly. Petitioners have also made payment of water charges from the year 1993 to 2004. She points out that construction of Dudh Ganga Dam on Dudh Ganga River started in the year 1976 and is completed in the year 2000. Since 1993, during Monsoons, water is stored in the dam and thereafter it is let in the river through out the year by Irrigation Department.

9. Learned AGP points out to us that since the year 1993 regularly water has been made available to the irrigaters through Dudh Ganga dam

Reservoir. There is a separate quota of water pursuant to the Inter-State Agreement for Karnataka State. Separate quota of water is made available to the villages Dattawad, Dhanwad and Ghosarwad. It is incorrect to state that irrigators from these villages are at the mercy of Karnataka State. She invites our attention to paras 5 to 7 of the affidavit. Finally, she contends that irrigators from villages concerned are getting regular water supply for irrigation and there is no challenge to the authority of Executive Engineer to collect water charges from the benefited zone of Dudh Ganga Project. She submits that plea of the irrigators from the benefited zone of Dudh Ganga Project for exemption from payment of water charges, was rejected by Maharashtra Krishna Valley Development Corporation and by State. She submits that merely because a notification under the Irrigation Act is not issued, petitioners cannot avoid payment of water charges. Moreso, when the Government has incurred approximately Rs.800.00 crores for construction of Dudh Ganga Project. She submits that if the investment made in the project is not recovered by levying water charges on the irrigators from the benefited zone, the State will suffer heavy financial

losses.

10. In our view, in the light of the affidavit filed in reply and the submissions made by the learned AGP it is not necessary to decide any larger issue muchless the one pertaining to power, authority and jurisdiction to levy the charges in question without issuance of notification under Irrigation Act. It is clear from a perusal of the record that at no stage have the petitioners disputed the fact that lands in question are in benefited zone. Once the petitioners are having advantages of benefited zone and irrigation facilities through out the year then they are bound to pay the necessary charges. In fact, the liability to make payment for drawing water is not disputed. The grievance is that supply is not assured and guaranteed. This grievance is without any basis. The affidavit sets out the steps and measures taken to supply water through the year. Moreso, when for a period of nearly 11 years the charges have been paid. It has been brought to our notice that the petitioners are not at the mercy of Karnataka State for water supply. By virtue of the Inter-State Agreement and construction of Dudh Ganga Project the petitioners have been

supplied water for irrigation purposes through out the year. Once the necessary authority in favour of Executive Engineer empowering him to levy, assess and recover water charges from the irrigators of benefited zone is not challenged, then it is not possible to accept the contentions raised by petitioners. It is not necessary to decide larger questions and pronounce upon the alternate submission about nature of levy. The liability of payment of charges for supply of water having not been disputed and considering the matter in its entirety, this is not a fit case for interference in writ jurisdiction.

11. In the result, Rule is discharged. No order as to costs.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)